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8 Attorneys for Defendant Josef F. Boehm
9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ALASKA

12 SALLY C. PURSER,)

13 Plaintiff,)

14 v.)

15 JOSEF F. BOEHM, ALLEN K.)
16 BOLLING, LESLIE WILLIAMS,)
17 JR., and BAMBI TYREE)

18 Defendants.)

Case No. 3:05-cv-00085 JKS

19 **MOTION TO EXTEND TIME**
20 **AND MOTION FOR CONFERENCE REGARDING**
21 **SCHEDULING AND PLANNING**

22 Josef F. Boehm, through his counsel of record, files the following memorandum in
23 support of his Motion to Extend Time and Motion for Conference Regarding Scheduling and
24 Planning.

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1 **I. DISCUSSION**

2 Mr. Boehm has recently retained the Kenner Law Firm as primary counsel in this case
3 and in the week of October 9, 2006, Mr. Boehm retained the firm of Wade, Kelly & Sullivan as
4 local counsel.

5 The discovery in this case consists of approximately 14 bankers' boxes of documentation
6 and recorded witness statements and information. Counsel has organized and consolidated the
7 discovery in order to facilitate thorough review, however it remains voluminous and will require
8 a reasonable amount of time to adequately evaluate.

9
10 Following counsel's initial overview of discovery, it is clear that there are a minimum of
11 twenty witnesses that must be deposed, many of whom have unstable living arrangements, or are
12 transient, and must be located through investigation.

13
14 The deadlines set forth in the original order are quickly approaching. Because the Court
15 and opposing counsel also have schedules that need to be coordinated the Court is respectfully
16 requested to schedule a brief telephonic conference to address discovery issues and deadlines.
17 This request is made pursuant to the implications of the original scheduling order indicating that
18 a conference must be requested if more time is required to complete discovery.

19 **A. Primary Counsel's Medical Emergency Necessitating Extension of Dates**

20
21 The Law Offices of David Kenner substituted as counsel for defendant Josef F. Boehm
22 on May 24, 2006. At that time David Kenner was a sole practitioner. It was anticipated he would
23 immerse himself in this matter as soon as he finished trial in USA v. Wankine, Case No. 04-

1 00373. That matter started trial on June 6, 2006 and finished on June 13, 2006, shortly
2 thereafter, Mr. Kenner fell and shattered his hip.

3
4 The injury resulted in the need for emergency hip replacement surgery on June 19,
5 2006. Other health issues were subsequently implicated. He remained under supervised
6 medical care or was otherwise limited to his home until August 30, 2006. During September
7 2006, Mr. Kenner gradually returned to his office in a full time capacity.

8
9 **B. Due Diligence Resulting From the Emergency**

10 During this time as Kenner's health continued to be a significant and debilitating
11 problem, he sought to negate other problems by reaching an agreement to work with attorney
12 Brett A. Greenfield on a full time basis. An agreement was reached in early August but
13 necessitated the closing down of Mr. Greenfield's partnership, transferring files, notifying clients
14 and arranging a move to a new office with the attendant problems of telephone and computer
15 transfer and service, staff hires, moving, etc. The move was complete by September 5, 2006. Mr.
16 Kenner has since returned to his practice on a full time basis and has expended a great deal of
17 time and energy getting this matter back on track.

18
19 **C. Extensive Need for Discovery and Complexity of the Case**

20 **1. File Materials**

21 In addition to the aforementioned unanticipated delay, Boehm's counsel received
22 discovery in the form of 14 banker's boxes of documents from prior counsel encompassing a
23 combination of the entire criminal matter as well as three civil matters. The boxes were not
24

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1 received by Mr. Kenner's office until the first week of August, 2006. As set forth above, counsel
2 was not able to begin inspection of the documents until September 5, 2006.

3 In six short weeks Boehm's counsel has 1) indexed the entire set of documents, 2)
4 scanned every page, 3) saved all of the documents in PDF format, 4) converted the documents
5 to OCR format (optical character recognition), 5) formatted the documents into a T.I.F.
6 (tagged image file format) image file, and 6) imported the documents into a laser fiche
7 database.
8

9 **2. Complexity of Action**

10 This case is extremely complex. It is anticipated that Boehm's counsel will need to take
11 as many as twenty depositions, including party depositions, witness depositions and expert
12 depositions. Many of the witness locations are currently unknown to Boehm's counsel.
13 Furthermore, some of the witnesses are incarcerated throughout the United States, creating an
14 obvious hurdle with respect to gaining access to the correctional facilities for the purpose of
15 communications and the setting and taking of depositions.

16 Defense counsel has expressed a desire to depose Mr. Boehm and Mr. Bolling, both of
17 whom are incarcerated outside of the State of Alaska. Counsel for Mr. Boehm has no opposition
18 to defense counsel taking Mr. Boehm's deposition, however, it is certain that additional time will
19 be required in order to make arrangements for this through the Bureau of Prisons. Further,
20 coordination of counsels' schedules will be required to insure that all parties will be able to have
21 equal access to Mr. Boehm and Mr. Bolling for deposition purposes as it is likely that the Bureau
22 of Prisons will require all depositions to be scheduled within the same time period.

1 **3. Experts**

2 Plaintiff has put her psychological and physiological well being at issue obviating the
3 need for a psychological evaluation of Plaintiff with Boehm's expert Mark Mills, M.D.. This will
4 certainly create a need for expert depositions and reports. In addition, Plaintiff has retained the
5 services of an economist for the purpose of proving damages. Defendant Boehm is in the process
6 of retaining an expert economist for the purpose of analyzing plaintiff's claims.

7 **4. Boehm's Incarceration**

8 Boehm is incarcerated in a federal prison located in Victorville, California approximately
9 100 miles from his counsel's office. In order for counsel to meet with Mr. Boehm they must
10 spend upwards of five hours in driving time and an hour of processing time to see Mr. Boehm for
11 a few hours per visit. Both Mr. Kenner and Mr. Greenfield have made at least six visits in the last
12 six weeks in order to effectively prepare and present a defense in all three civil matters.

13 **5. Good Cause Has Been Shown**

14 In order to effectively defend this matter and move litigation in an expeditious manner
15 Boehm's counsel has retained the services of local counsel Pam Sullivan of Wade, Kelly &
16 Sullivan. Boehm's counsel have been extremely diligent in preparing and defending this matter
17 ever since Mr. Kenner's return to the office in early September and his association with Mr.
18 Greenfield.

19 Counsel is working at a feverish pace to effectively represent and defend Mr. Boehm in
20 this action as well as two additional civil matters. The need for extensive discovery is obvious as
21 is the need for an extension of time due to the aforementioned delays, which were out of the

1 control of Boehm's counsel. It is not the intention of counsel to seek unnecessary delays. Counsel
2 for Plaintiff has been made well aware of the situation and need for extension.

3 Boehm has shown good cause for an order granting his motion and allowing a conference
4 regarding scheduling and planning.

5 **II. CONCLUSION**

6 Due to the volume of discovery and the numerous witnesses in this case, this extension is
7 requested which will allow counsel to adequately prepare the case, thereby preventing the risk of
8 prejudice to Mr. Boehm.
9

10
11
12 DATED this 2nd day of November, 2006 at Anchorage, Alaska.

13
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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on November 2, 2006, a copy of the foregoing was served electronically on Darryl L. Jones, Esq. and Mary Pate, Esq.;
21 and by regular U. S. Mail on: Allen K. Bolling (Inmate No: 14911-006, USP Terre Haute, U.S. Penitentiary, P.O. Box 12015, Terre Haute, IN
22 47801, C.M. 7002 2410 0006 6742 2188); Leslie Williams (Inmate No: 14903-006, FCI Yazoo City Medium, P.O. Box 5888, Yazoo City, Ms.
39194).
s/ Pamela Sullivan.

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